

**76-2-101. Requirements of criminal conduct and criminal responsibility.**

(1) (a) A person is not guilty of an offense unless the person's conduct is prohibited by law; and

(b) (i) the person acts intentionally, knowingly, recklessly, with criminal negligence, or with a mental state otherwise specified in the statute defining the offense, as the definition of the offense requires; or

(ii) the person's acts constitute an offense involving strict liability.

(2) These standards of criminal responsibility do not apply to the violations set forth in Title 41, Chapter 6a, Traffic Code, unless specifically provided by law.

Amended by Chapter 2, 2005 General Session

**76-2-102. Culpable mental state required -- Strict liability.**

Every offense not involving strict liability shall require a culpable mental state, and when the definition of the offense does not specify a culpable mental state and the offense does not involve strict liability, intent, knowledge, or recklessness shall suffice to establish criminal responsibility. An offense shall involve strict liability if the statute defining the offense clearly indicates a legislative purpose to impose criminal responsibility for commission of the conduct prohibited by the statute without requiring proof of any culpable mental state.

Amended by Chapter 90, 1983 General Session

**76-2-103. Definitions.**

A person engages in conduct:

(1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

(2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(3) Recklessly with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

Amended by Chapter 229, 2007 General Session

**76-2-104. Culpable mental state -- Higher mental states included.**

(1) If acting with criminal negligence is sufficient to establish the culpable mental state for an element of an offense, that element is also established if a person acts intentionally, knowingly, or recklessly.

(2) If acting recklessly is sufficient to establish the culpable mental state for an element of an offense, that element is also established if a person acts intentionally or knowingly.

(3) If acting knowingly is sufficient to establish the culpable mental state for an element of an offense, that element is also established if a person acts intentionally.

Amended by Chapter 75, 1998 General Session

**76-2-105. Transferred intent.**

Where intentionally causing a result is an element of an offense, that element is established even if a different person than the actor intended was killed, injured, or harmed, or different property than the actor intended was damaged or otherwise affected.

Enacted by Chapter 199, 2004 General Session

**76-2-201. Definitions.**

As used in this part:

(1) "Agent" means any director, officer, employee, or other person authorized to act in behalf of a corporation or association.

(2) "High managerial agent" means:

(a) A partner in a partnership;

(b) An officer of a corporation or association;

(c) An agent of a corporation or association who has duties of such responsibility that his conduct reasonably may be assumed to represent the policy of the corporation or association.

(3) "Corporation" means all organizations required by the laws of this state or any other state to obtain a certificate of authority, a certificate of incorporation, or other form of registration to transact business as a corporation within this state or any other state and shall include domestic, foreign, profit and nonprofit corporations, but shall not include a corporation sole, as such term is used in Title 16, Chapter 7, Utah Code Annotated 1953. Lack of an appropriate certificate of authority, incorporation, or other form of registration shall be no defense when such organization conducted its business in a manner as to appear to have lawful corporate existence.

Enacted by Chapter 196, 1973 General Session

**76-2-202. Criminal responsibility for direct commission of offense or for**

**conduct of another.**

Every person, acting with the mental state required for the commission of an offense who directly commits the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct.

Enacted by Chapter 196, 1973 General Session

**76-2-203. Defenses unavailable in prosecution based on conduct of another.**

In any prosecution in which an actor's criminal responsibility is based on the conduct of another, it is no defense:

- (1) That the actor belongs to a class of persons who by definition of the offense is legally incapable of committing the offense in an individual capacity, or
- (2) That the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense or is immune from prosecution.

Enacted by Chapter 196, 1973 General Session

**76-2-204. Criminal responsibility of corporation or association.**

A corporation or association is guilty of an offense when:

- (1) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations or associations by law; or
- (2) The conduct constituting the offense is authorized, solicited, requested, commanded, or undertaken, performed, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation or association.

Enacted by Chapter 196, 1973 General Session

**76-2-205. Criminal responsibility of person for conduct in name of corporation or association.**

A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or on behalf of a corporation or association to the same extent as if such conduct were performed in his own name or behalf.

Enacted by Chapter 196, 1973 General Session

**76-2-301. Person under 14 years old not criminally responsible.**

A person is not criminally responsible for conduct performed before he reaches the age of 14 years. This section shall in no way limit the jurisdiction of or proceedings before the juvenile courts of this state.

Enacted by Chapter 196, 1973 General Session

**76-2-302. Compulsion.**

(1) A person is not guilty of an offense when he engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would not have resisted.

(2) The defense of compulsion provided by this section shall be unavailable to a person who intentionally, knowingly, or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

(3) A married woman is not entitled, by reason of the presence of her husband, to any presumption of compulsion or to any defense of compulsion except as in Subsection (1) provided.

Enacted by Chapter 196, 1973 General Session

**76-2-303. Entrapment.**

(1) It is a defense that the actor was entrapped into committing the offense. Entrapment occurs when a peace officer or a person directed by or acting in cooperation with the officer induces the commission of an offense in order to obtain evidence of the commission for prosecution by methods creating a substantial risk that the offense would be committed by one not otherwise ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(2) The defense of entrapment shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening the injury to a person other than the person perpetrating the entrapment.

(3) The defense provided by this section is available even though the actor denies commission of the conduct charged to constitute the offense.

(4) Upon written motion of the defendant, the court shall hear evidence on the issue and shall determine as a matter of fact and law whether the defendant was entrapped to commit the offense. Defendant's motion shall be made at least 10 days before trial except the court for good cause shown may permit a later filing.

(5) Should the court determine that the defendant was entrapped, it shall dismiss the case with prejudice, but if the court determines the defendant was not entrapped, such issue may be presented by the defendant to the jury at trial. Any order by the court dismissing a case based on entrapment shall be appealable by the state.

(6) In any hearing before a judge or jury where the defense of entrapment is an issue, past offenses of the defendant shall not be admitted except that in a trial where the defendant testifies he may be asked of his past convictions for felonies and any testimony given by the defendant at a hearing on entrapment may be used to impeach his testimony at trial.

Amended by Chapter 282, 1998 General Session

**76-2-304. Ignorance or mistake of fact or law.**

(1) Unless otherwise provided, ignorance or mistake of fact which disproves the culpable mental state is a defense to any prosecution for that crime.

(2) Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime unless:

(a) Due to his ignorance or mistake, the actor reasonably believed his conduct did not constitute an offense, and

(b) His ignorance or mistake resulted from the actor's reasonable reliance upon:

(i) An official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(ii) A written interpretation of the law contained in an opinion of a court of record or made by a public servant charged by law with responsibility for interpreting the law in question.

(3) Although an actor's ignorance or mistake of fact or law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the fact or law were as he believed.

Amended by Chapter 32, 1974 General Session

**76-2-304.5. Mistake as to victim's age not a defense.**

(1) It is not a defense to the crime of child kidnapping, a violation of Section 76-5-301.1; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation of Section 76-5-402.3; sodomy on a child, a violation of Section 76-5-403.1; sexual abuse of a child, a violation of Section 76-5-404.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4); or an attempt to commit any of these offenses, that the actor mistakenly believed the victim to be 14 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(2) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Section 76-5-401; sexual abuse of a minor, a violation of Section 76-5-401.1; or an attempt to commit either of these offenses, that the actor mistakenly believed the victim to be 16 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(3) It is not a defense to the crime of aggravated human trafficking or aggravated human smuggling, a violation of Section 76-5-310, that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(4) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Subsection 76-5-401.2(2)(a)(ii), that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(5) It is not a defense to any of the following crimes that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or

was unaware of the victim's true age:

- (a) patronizing a prostitute, a violation of Section 76-10-1303;
- (b) aggravated exploitation of a prostitute, a violation of Section 76-10-1306; or
- (c) sexual solicitation, a violation of Section 76-10-1313.

Amended by Chapter 34, 2013 General Session

Amended by Chapter 196, 2013 General Session

**76-2-305. Mental illness -- Use as a defense -- Influence of alcohol or other substance voluntarily consumed -- Definition.**

(1) (a) It is a defense to a prosecution under any statute or ordinance that the defendant, as a result of mental illness, lacked the mental state required as an element of the offense charged.

(b) Mental illness is not otherwise a defense, but may be evidence in mitigation of the penalty in a capital felony under Section 76-3-207 and may be evidence of special mitigation reducing the level of a criminal homicide or attempted criminal homicide offense under Section 76-5-205.5.

(2) The defense defined in this section includes the defenses known as "insanity" and "diminished mental capacity."

(3) A person who asserts a defense of insanity or diminished mental capacity, and who is under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense is not excused from criminal responsibility on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness.

(4) (a) "Mental illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, mental retardation.

(b) "Mental illness" does not mean an abnormality manifested primarily by repeated criminal conduct.

(5) "Mental retardation" means a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to age 22.

Amended by Chapter 11, 2003 General Session

**76-2-306. Voluntary intoxication.**

Voluntary intoxication shall not be a defense to a criminal charge unless such intoxication negates the existence of the mental state which is an element of the offense; however, if recklessness or criminal negligence establishes an element of an offense and the actor is unaware of the risk because of voluntary intoxication, his unawareness is immaterial in a prosecution for that offense.

Enacted by Chapter 196, 1973 General Session

**76-2-307. Voluntary termination of efforts prior to offense.**

It is an affirmative defense to a prosecution in which an actor's criminal responsibility arises from his own conduct or from being a party to an offense under Section 76-2-202 that prior to the commission of the offense, the actor voluntarily terminated his effort to promote or facilitate its commission and either:

- (1) Gave timely warning to the proper law enforcement authorities or the intended victim; or
- (2) Wholly deprives his prior efforts of effectiveness in the commission.

Amended by Chapter 20, 1995 General Session

**76-2-308. Affirmative defenses.**

Defenses enumerated in this part constitute affirmative defenses.

Enacted by Chapter 196, 1973 General Session

**76-2-401. Justification as defense -- When allowed.**

(1) Conduct which is justified is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:

- (a) when the actor's conduct is in defense of persons or property under the circumstances described in Sections 76-2-402 through 76-2-406 of this part;
- (b) when the actor's conduct is reasonable and in fulfillment of his duties as a governmental officer or employee;
- (c) when the actor's conduct is reasonable discipline of minors by parents, guardians, teachers, or other persons in loco parentis, as limited by Subsection (2);
- (d) when the actor's conduct is reasonable discipline of persons in custody under the laws of the state; or
- (e) when the actor's conduct is justified for any other reason under the laws of this state.

(2) The defense of justification under Subsection (1)(c) is not available if the offense charged involves causing serious bodily injury, as defined in Section 76-1-601, serious physical injury, as defined in Section 76-5-109, or the death of the minor.

Amended by Chapter 126, 2000 General Session

**76-2-402. Force in defense of person -- Forcible felony defined.**

(1) (a) A person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person's imminent use of unlawful force.

(b) A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force, or to prevent the commission of a forcible felony.

(2) (a) A person is not justified in using force under the circumstances specified in Subsection (1) if the person:

(i) initially provokes the use of force against the person with the intent to use force as an excuse to inflict bodily harm upon the assailant;

(ii) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(iii) was the aggressor or was engaged in a combat by agreement, unless the person withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force.

(b) For purposes of Subsection (2)(a)(iii) the following do not, by themselves, constitute "combat by agreement":

(i) voluntarily entering into or remaining in an ongoing relationship; or

(ii) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(a)(iii).

(4) (a) For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76, Chapter 6, Offenses Against Property.

(b) Any other felony offense which involves the use of force or violence against a person so as to create a substantial danger of death or serious bodily injury also constitutes a forcible felony.

(c) Burglary of a vehicle, defined in Section 76-6-204, does not constitute a forcible felony except when the vehicle is occupied at the time unlawful entry is made or attempted.

(5) In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors:

(a) the nature of the danger;

(b) the immediacy of the danger;

(c) the probability that the unlawful force would result in death or serious bodily injury;

(d) the other's prior violent acts or violent propensities; and

(e) any patterns of abuse or violence in the parties' relationship.

Amended by Chapter 324, 2010 General Session

Amended by Chapter 361, 2010 General Session

### **76-2-403. Force in arrest.**

Any person is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another



from bodily harm while making an arrest.

Enacted by Chapter 196, 1973 General Session

**76-2-404. Peace officer's use of deadly force.**

(1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

(a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(3) or (4);

(b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and

(i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or

(ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or

(c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.

(2) If feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (1)(b) or (1)(c).

Amended by Chapter 51, 2004 General Session

**76-2-405. Force in defense of habitation.**

(1) A person is justified in using force against another when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his habitation; however, he is justified in the use of force which is intended or likely to cause death or serious bodily injury only if:

(a) the entry is made or attempted in a violent and tumultuous manner, surreptitiously, or by stealth, and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person, dwelling, or being in the habitation and he reasonably believes that the force is necessary to prevent the assault or offer of personal violence; or

(b) he reasonably believes that the entry is made or attempted for the purpose of committing a felony in the habitation and that the force is necessary to prevent the commission of the felony.

(2) The person using force or deadly force in defense of habitation is presumed for the purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the entry or attempted entry is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or surreptitiously or by stealth, or for the purpose of committing a felony.

Amended by Chapter 252, 1985 General Session

**76-2-406. Force in defense of property -- Affirmative defense.**

(1) A person is justified in using force, other than deadly force, against another when and to the extent that the person reasonably believes that force is necessary to prevent or terminate another person's criminal interference with real property or personal property:

- (a) lawfully in the person's possession;
- (b) lawfully in the possession of a member of the person's immediate family; or
- (c) belonging to a person whose property the person has a legal duty to protect.

(2) In determining reasonableness under Subsection (1), the trier of fact shall, in addition to any other factors, consider the following factors:

- (a) the apparent or perceived extent of the damage to the property;
- (b) property damage previously caused by the other person;
- (c) threats of personal injury or damage to property that have been made previously by the other person; and
- (d) any patterns of abuse or violence between the person and the other person.

Amended by Chapter 377, 2010 General Session

**76-2-407. Deadly force in defense of persons on real property.**

(1) A person is justified in using force intended or likely to cause death or serious bodily injury against another in his defense of persons on real property other than his habitation if:

- (a) he is in lawful possession of the real property;
- (b) he reasonably believes that the force is necessary to prevent or terminate the other person's trespass onto the real property;
- (c) the trespass is made or attempted by use of force or in a violent and tumultuous manner; and

(d) (i) the person reasonably believes that the trespass is attempted or made for the purpose of committing violence against any person on the real property and he reasonably believes that the force is necessary to prevent personal violence; or

(ii) the person reasonably believes that the trespass is made or attempted for the purpose of committing a forcible felony as defined in Section 76-2-402 that poses imminent peril of death or serious bodily injury to a person on the real property and that the force is necessary to prevent the commission of that forcible felony.

(2) The person using deadly force in defense of persons on real property under Subsection (1) is presumed for the purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the trespass or attempted trespass is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or for the purpose of committing a forcible felony.

Enacted by Chapter 273, 2002 General Session